

**STATE OF CALIFORNIA**  
**ENERGY RESOURCES CONSERVATION**  
**AND DEVELOPMENT COMMISSION**

In the Matter of:	)	Docket No. 09-AFC-5
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Application For Certification for the	)	
Abengoa Mojave Solar Project	)	
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**RESPONSE OF ENERGY COMMISSION STAFF IN OPPOSITION TO  
APPLICANT’S MOTION TO STRIKE AND TO SHORTEN TIME TO RESPOND TO  
MOTION TO STRIKE**

**I. INTRODUCTION**

On Friday, July 9, 2010, the Applicant for the Abengoa Mojave Solar Project (“Project”) filed a *Motion to Strike Energy Commission Staff’s Supplemental Opening Testimony Regarding Proposed Condition of Certification Worker Safety-6 and Shorten Time* (“Motion to Strike”). Staff files this response in opposition to Applicant’s Motion to Strike just two business days after receiving Applicant’s motion, not only to facilitate progress of this proceeding but also to respond to Applicant’s implied request to shorten the response time and explicit request to unilaterally and untimely make its opening case on adequate mitigation for fire protection and emergency services.

Staff opposes Applicant’s Motion to Strike. Staff does not oppose Applicant’s request for a continuance in order to prepare its own supplemental opening testimony, insofar as (1) the Applicant does produce a Fire Needs Assessment at the end of the 30-day period, as it proposes, and (2) the Committee denies Applicant’s Motion to Strike *Staff’s Supplemental Opening Testimony Regarding Proposed Condition of Certification*

*Worker Safety-6* (“Staff’s Supplemental Opening Testimony”) and allows for a reasonable period for rebuttal testimony.

**II. THE RECORD IS DEFICIENT WITHOUT STAFF’S SUPPLEMENTAL OPENING TESTIMONY AND STAFF ACTED IN CONFORMITY WITH THE COMMITTEE’S ORDER**

The Applicant has moved to strike Staff’s Supplemental Opening Testimony, filed on July 2, 2010. Applicant argues that Staff’s Supplemental Opening Testimony exceeds the scope of supplemental testimony, is based on documents that are “conclusory” or lack supporting documentation, and should therefore be stricken. (Motion to Strike, pp. 5-8.) Applicant also requests thirty days “in order to have a fair opportunity to address this issue” of fire and emergency services protection and mitigation. (*Id.*, p. 3.) Applicant’s request would frustrate the Committee’s order to develop the record on the sufficiency of fire and emergency services and is, moreover, patently unfair and unbalanced in that it would effectively limit opening testimony on this issue to a single party – the Applicant. Applicant’s Motion to Strike should be denied, and the record should be developed as fully as possible with the best information available, including Staff’s Supplemental Opening and to-be-filed Rebuttal Testimony and Applicant’s supplemental opening testimony.

The Committee correctly observed and Staff acknowledged that, as of the date of the prehearing conference for this proceeding, the record did not contain substantial evidence on the topic area of worker safety and fire protection sufficient to support a Commission decision approving the Project. (June 21, 2010 Prehearing Conference, TR 46:18-47:9 (Staff/Hammond); 52:25-53:10 (Hearing Officer (“H.O.”) Vaccaro); 53:22-54:8 (Comr. and Presiding Member Eggert).) Quite simply, absent all parties’ opening and rebuttal testimony on this subject, the Commission would not be able to find that the

Project complies with the California Environmental Quality Act and other applicable Laws, Ordinances, Regulations, and Standards (“LORS”).

The first draft of the proposed Condition of Certification **WORKER SAFETY-6** was included in Staff’s initial opening testimony on Worker Safety and Fire Protection to address the expected shortcomings of existing public services to serve the proposed Project and surrounding communities. (See Exh. 301, pp. 5.14-1 to 5.14-27.) Contrary to the Applicant’s statement of facts in its Motion to Strike, Staff did indeed determine that the project would have a significant cumulative impact on the local fire protection services and proposed **WORKER SAFETY-6** to mitigate the impacts to less than significant. (*Id.*) Applicant’s characterization of Staff’s forwarding an “entirely new position” is therefore an overstatement.

As discussed below, Staff’s initial opening testimony was based on admittedly limited information from the San Bernardino County Fire Department (“SBCFD”). When it received better information from the SBCFD as the proceeding had progressed, Staff made an honest acknowledgement that such information should be submitted as revised or supplemental opening testimony (June 21, 2010 Prehearing Conference, TR 45:24-45:6 (Hammond and H.O. Vaccaro)), so that all parties would have an opportunity to respond through rebuttal testimony. Staff accordingly requested leave to file revised opening testimony based on the information it had lately received from the SBCFD (June 21, 2010 Prehearing Conference, TR 47:7-47:9 (Staff/Hammond)), and the Committee granted all parties an opportunity to file supplemental opening and rebuttal testimony on Worker Safety and Fire Protection (*Revised Notice of Evidentiary Hearing* (June 23, 2010), p. 2).

In accordance with the most recent Committee schedule, Staff submitted more robust data and analyses through its Supplemental Opening Testimony (Exh. 313) and

did not exceed the scope of the Committee's order or instruction that the record be developed to support findings regarding the sufficiency of fire and emergency services.

**III. STAFF WAS DILIGENT IN PURSUING MEANINGFUL DATA, AND THE COMMITTEE SHOULD NOT IGNORE THE SBCFD'S MORE RECENT AND BETTER-DEVELOPED DATA AND ANALYSES NOW AVAILABLE**

Applicant has the burden of presenting substantial evidence to support the findings and conclusions required for certification. (Cal. Code Regs., Tit. 20, § 1748, subd. (e).) As such, Applicant bears the burden of demonstrating that the Project complies with LORS. Applicant's opening testimony, however, does not contain any discussion of whether the County's public services are adequate to meet the increased needs caused by the Project.

The Applicant's opening testimony states that "[t]he Project will rely on both onsite fire protection systems and offsite fire protection services (San Bernardino County Fire Department)," but acknowledges that "[s]ite personnel will not be expected to fight fires past the incipient stages." (Exh. 1, AFC, pp. 5.18-23 to 5.18-25.) Moreover, Applicant will not be able to provide emergency medical services or rescue to personnel, when it proposes to have upwards of almost 1,200 employees onsite during construction. Yet the Applicant does not address anywhere in its opening testimony whether existing fire protection and emergency services are adequate to serve the increased emergency service capacity requirements the Project imposes on the County. (See Exh. 1, AFC, section 5.18; Exh. 48, Applicant's Opening Testimony, pp. 158-162.) Without record evidence to support a finding that local emergency services would be adequate to serve the needs of the Project and of the local community, Staff itself undertook the effort of presenting substantial evidence on this subject.

In preparation for drafting its initial opening testimony, Staff analyzed impacts to local fire and emergency services by reviewing the AFC and conferring with representatives of the SBCFD. (Exh. 301, p. 5.14-18.) Staff works closely with local fire and emergency services agencies (as it did with the SBCFD here), which tend to be in sole possession of the best information on local fire and emergency services capabilities. Staff's initial consultations with the SBCFD did not produce meaningful data to conduct an analysis of a facility with the complexity, scale, and fire-risk as the Project, which will have at a minimum 2.3 million gallons of highly flammable HTF in operation and storage. Staff received only "sparse data" from the SBCFD on historical incidents at solar facilities and noted that "the number of thermal solar power plants is so few and their operating history so short, any conclusion as to accident incident rates is weak from a statistical perspective." (Exh. 313, p.3.) Despite this, the data underlying and analysis contained in its initial opening testimony represented the best information and analysis available at the time the Supplemental Staff Assessment – Part A was published.

The challenges posed by the volume of solar projects coming online in the California deserts are recent, novel, and tremendous in scale. With increasing understanding of these challenges and with input from Staff experienced with analyzing power plants, the SBCFD lately commenced in-depth analyses and comprehensive planning to provide services for these projects. (*Id.*, p. 5.) Staff has been working closely with the San Bernardino County Fire Department, as well as the fire departments of other counties in which solar thermal projects are proposed, and the desert counties and local fire departments are coming to appreciate the need for enhanced review of impacts to public services. Staff came into possession of better information from the SBCFD only after filing its initial opening testimony on this subject.

Applicant faults Staff for the Emergency Response Matrix and other documents' "absence of supporting documentation." (Motion to Strike, p. 7.) Staff acknowledges that its Supplemental Opening Testimony is based on documents not previously used in AFC proceedings, such as the Emergency Response Matrix. Each of the Reference documents, however, was identified when docketed, and Staff and the SBCFD will respond to questions on and explain the inputs and assumptions for these Reference documents, and Applicant is free to question Staff on these matters during cross-examination. Staff is unaware of any requirement obligating a party to provide additional supporting documentation for data supporting prepared testimony before such data and testimony may be submitted. Most importantly, however, Staff cannot ignore this better information while the record on Worker Safety and Fire Protection remains open, and the Committee should not disallow the receipt of data and analyses contained in Staff's Supplemental Opening Testimony into evidence.

**IV. STAFF DOES NOT OBJECT TO APPLICANT'S REQUEST FOR 30-DAY CONTINUANCE IN WHICH TO SUBMIT SUPPLEMENTAL OPENING TESTIMONY INsofar AS APPLICANT PRODUCES A FIRE AND EMERGENCY SERVICES NEEDS ASSESSMENT, STAFF'S OPENING TESTIMONY IS RECEIVED INTO THE RECORD, AND STAFF AND PARTIES RECEIVE MORE THAN ONE-HALF DAY TO FILE REBUTTAL TESTIMONY**

Curiously, while Applicant moves to strike Staff's Supplemental Opening Testimony, it proceeds to request a 30-day extension of time in which to file its own opening and rebuttal testimony. Applicant states that it will use such time to conduct discovery and its own analysis, as well as to hold discussions with the County to reach a possible agreement. (Motion to Strike, p. 3.)

Staff continues to encourage the Applicant to hold discussions with SBCFD, who would be in the best position to explain the fire and emergency needs of the service area of the Project.

Like the Committee, Staff appreciates the need to develop a robust record for Worker Safety and Fire Protection with substantial evidence submitted by all parties who have Committee leave to do so. Staff does not object to Applicant's request for a 30-day continuance, provided that Staff's Supplemental Opening Testimony and to-be-filed Rebuttal Testimony is received into evidence, that Staff has adequate time to file its Rebuttal Testimony, and that the Applicant uses the 30-day continuance to prepare a Fire Needs Assessment that also includes an assessment of the need for other public and emergency response services, such as rescue, hazardous materials spills, and emergency medical services. Staff considers it fair for the Committee to give parties at least five business days to file rebuttal.

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## **V. CONCLUSION**

The Committee should deny Applicant's Motion to Strike. Staff does not oppose Applicant's request for a 30-day continuance to submit its own opening and rebuttal testimony, provided that Staff's Supplemental Opening Testimony and to-be-filed Rebuttal Testimony are received into the record and that Staff has at least five business days to file supplemental rebuttal testimony.

DATED: July 13, 2010

Respectfully submitted,

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